

REMARKS

The Office Communication of July 12, 2006 has been received and reviewed. Claims 1-27 are currently pending in the application and subject to a Restriction Requirement. (See, Office Communication of July 12, 2006, at page 2, hereinafter "Office Communication"). The Examiner has required election in the present application between Groups I-III as described in the Office Action at page 2.

The Examiner further reminds Applicants that because the present Restriction is between a product and its process of use, where Applicants elect claims directed to the product, and a product is subsequently found allowable, withdrawn process claims that depend from or otherwise include all the limitations of the allowable product claims will be rejoined in accordance with the provisions of M.P.E.P. § 821.04. Such process claims that depend from or otherwise include all the limitations of the patentable product are entered as a matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier. Furthermore, in the event of rejoinder, Applicants understand that the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims must be fully examined for patentability according to the provisions of M.P.E.P. § 1.104.

For the purpose of continuing prosecution of the present application, Applicants elect, with traverse, Group I, claims 1-13 and 23-26 (to the extent the pharmaceutical composition comprises a polypeptide product).

Applicants traverse on the grounds that Groups I and II are related as polypeptides and nucleic acids encoding the same. Thus, a search of both Groups I and II would not be overly

burdensome to the Examiner, contrary to the Examiner's statement on page 3 of the Office Communication.

That is, claim 14 depends from claim 13 and is directed to nucleic acid that encodes the polypeptide encompassed by claim 13. Claim 13 depends from claim 1. Claims 15-22 depend from, either directly or indirectly, claim 14. Thus, upon performing a sequence-based search for the polypeptides of Group I, the Examiner has, inherently also performed the same search for nucleotides encoding the polypeptides encompassed by Group I.

Thus, since the burden is not high to search for both a polypeptide and a nucleotide sequence encoding the same protein, Applicants respectfully request reconsideration and withdrawal of the Restriction Requirement at least with respect to Groups I and II.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Thomas J. Siepmann, Ph.D., Registration No 57,374 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

- ☐ Attached is a Petition for Extension of Time.
- ☐ Attached hereto is the fee transmittal listing the required fees.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

Dated: August 14, 2006

Respectfully submitted,

By 

Gerald M. Murphy, Jr.
Registration No.: 28,977
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road
Suite 100 East
P.O. Box 747
Falls Church, Virginia 22040-0747
(703) 205-8000
Attorney for Applicant